

353 N. CLARK, CHICAGO, IL 60654

JENNER & BLOCK LLP

January 19, 2022

VIA ECF

Hon. Gregory H. Woods
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Kumaran v. National Futures Association, et al.*, No. 1:20-cv-3668-GHW-SDA

Dear Judge Woods:

Defendants National Futures Association (“NFA”), Nicole Wahls, and Vilia Sutkus-Kiela (the “NFA Defendants”) write to respectfully request that if the Court decides to request briefing on Ms. Kumaran’s Motion for Sanctions, ECF No. 140, that it hold any such briefing in abeyance pending the Court’s resolution of Plaintiffs’ Objections to the Report and Recommendation. As the NFA Defendants have explained before, the sanctions motion raises dozens of arguments that, in addition to being patently meritless, are part of the Court’s merits considerations. *See* ECF No. 138. The NFA Defendants also respectfully request that the Court strike Plaintiffs’ non-compliant reply brief, or at a minimum strike everything after the first fifteen pages authorized by this Court’s prior order.

First, as explained in the NFA Defendants’ January 12 Letter, ECF No. 138, Ms. Kumaran’s sanctions motion merely identifies substantive disagreements with the NFA Defendants’ arguments regarding Plaintiffs’ Objections that are better suited for resolution on the parties’ briefs on the merits of Ms. Kumaran’s objections—not a sanctions motion. Thus, any briefing on the sanctions motion will be largely duplicative of the parties’ briefs on the merits. If this Court—like Magistrate Judge Aaron—agrees with the NFA Defendants’ contentions and adopts the Report and Recommendation, there can be no possible basis for sanctions against the NFA Defendants. The NFA Defendants thus respectfully request that the Court hold any briefing on Ms. Kumaran’s sanctions motion until it has disposed of Plaintiffs’ Objections. Plaintiffs oppose this request.

Second, the NFA Defendants note that Plaintiffs have once again violated this Court’s orders regarding length. On October 20, 2021, this Court granted Plaintiffs’ (belated) request to exceed the page limit for their Objections, noting that Plaintiffs’ reply brief “shall be no longer than 15 pages.” ECF No. 122. But Plaintiffs have now filed a 48-page reply (which is once again not double-spaced, in violation of Local Rule 11.1(b)), in violation of this Court’s order. *See* ECF No. 122. Plaintiffs have informed this Court that they plan to file another belated motion for excess pages this evening. ECF No. 146.

Plaintiffs have had over two months to prepare compliant replies, and have instead disregarded the local rules and this Court’s orders. The NFA Defendants are cognizant of Ms.

January 19, 2022

Page 2

Kumaran's status as a pro se litigant. But these briefs are also signed by counsel for NRCM, who is "held to a higher standard." *Kalderon v. Finkelstein*, 495 F. App'x 103, 106 (2d Cir. 2012). Moreover, "while pro se litigants may in general deserve more lenient treatment than those represented by counsel, all litigants, including pro ses, have an obligation to comply with court orders. When they flout that obligation they, like all litigants, must suffer the consequences of their actions." *McDonald v. Head Crim. Ct. Supervisor Officer*, 850 F.2d 121, 124 (2d Cir. 1988). As such, the NFA Defendants respectfully request that this Court strike this filing in its entirety or, at a minimum, strike the final 33 pages that violate this Court's order. The NFA Defendants also respectfully request that this Court not permit Plaintiffs to file any further amended briefs. Plaintiffs oppose this request.

Sincerely,

/s/ Gregory M. Boyle

Gregory M. Boyle

Counsel of Record

JENNER & BLOCK LLP

353 N. Clark Street

Chicago, IL 60654

(312) 923-2651

GBoyle@jenner.com

Counsel for National Futures Association,

Vilia Sutkus-Kiela and Nicole Wahls